

**M e m o r a n d u m**

To : Mr. Verne Walton

Date: July 1, 1992

From : James M. Williams

Subject: Modoc County Inquiry on Tax Situs of Equipment

In your memo of June 8, 1992 you asked us to review a proposed response to the Modoc County Assessor regarding tax situs of movable equipment. According to the assessor the property had a tax situs in Michigan prior to arrival in the county in January of this year. It was present on the lien date but would probably be out of the county by the end of May. The assessor was informed by the company accountant, headquartered in Texas, that the equipment would be present in various counties of the state for completion of a two year project.

The assessor asked whether situs has been established in Modoc County and if not, can California situs be established in any county if the equipment is not present for six months?

Your response correctly points out the California law that applies to the above facts. You correctly note that Rule 205 applies to situs disputes between California counties and imply that it can not legally apply to interstate disputes. However, since it appears that the six month test will not be met, you then conclude that Rule 203 should apply and Modoc should make the assessment.

Here the equipment does not meet the "in transit" requirements of the fifth paragraph of Rule 203. It is not being transported and is not in the process of being delivered to a destination. Instead it is being moved from worksite to worksite after periods employment for the beneficial use of the owner. This compels us to review the third paragraph of Rule 205(a). There we are left to choose between the location where it is normally returned between uses or the principal place of business of the owner (Texas?). If the property is going to be in the state for two consecutive, the latter will not apply and the former is doubtful because there is no such place of normal return.

Since there is no clear cut application in this instance, we would recommend that the Modoc Assessor act directly under the constitutional provision, Article XIII, Section 14, and make the assessment because the equipment was present in that county on the lien date. If the subsequent

movement of the equipment generates a greater than six month stay in another county, then it may be appropriate to shift the assessment to that county. If the equipment is returned to Texas prior to the end of the year, it may be appropriate to either cancel or prorate the assessment. We essentially get the same result but arrive by a different route.

JMW

cc: Mr. John Hagerty
Mr. Dale Peterson